

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 227 (Sub-No. 13X)]

Wheeling & Lake Erie Railway Company—Discontinuance of Service Exemption—in
Erie County, Ohio

Wheeling & Lake Erie Railway Company (W&LE) has filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments and Discontinuances of Service to discontinue: (1) W&LE's lease and operation of the Norfolk Southern Railway Company (NSR) rail-water dock facility in Huron, Erie County, Ohio, consisting of approximately 27.6 acres of land, a 5,142-foot loop track, and approximately two miles of yard and support track in the dock area (collectively, Huron Dock); and (2) W&LE's overhead trackage rights on NSR's rail lines extending from approximately milepost B242 at Bellevue, Ohio, to approximately milepost B229 at Berlin Heights, Ohio, and from milepost B232/SC2.61 at Shinrock, Ohio (on the Bellevue-Berlin Heights segment), through milepost SC0.0/H10.7 at Huron Jct., Ohio, to the Huron Dock connection at milepost H12.2 in Huron, a total distance of approximately 17.1 miles in Erie County, Ohio (collectively, the Bellevue-Huron Trackage Rights).¹

¹ W&LE leased the Huron Dock and acquired the related Bellevue-Huron Trackage Rights from the Norfolk and Western Railway Company (N&W), a predecessor to NSR, in 1994. See Wheeling & Lake Erie Ry.—Lease & Operation Exemption—Norfolk & W. Ry.'s Dock at Huron, Ohio, FD 32516 (ICC served June 27, 1994); Wheeling & Lake Erie Ry.—Trackage Rights Exemption—Norfolk & W. Ry., FD 32525 (ICC served July 15, 1994); see also CSX Corp.—Control & Operating

(continued...)

The Huron Dock is located in U.S. Postal Service Zip Code 44839, and the Bellevue-Huron Trackage Rights traverse Zip Codes 44839, 44814, 44846, 44847, and 44811.

W&LE states that the agreements with NSR governing the Huron Dock lease and the Bellevue-Huron Trackage Rights have now expired and the requested discontinuance exemption will terminate W&LE's remaining common carrier status with respect to those rights and permit NSR to pursue abandonment and disposition of the Huron Dock.

W&LE has certified that: (1) no W&LE revenue traffic has moved over the Huron Dock or the Bellevue-Huron Trackage Rights for at least two years;² (2) any W&LE overhead traffic formerly handled via the Huron Dock or the Bellevue-Huron Trackage Rights could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Huron Dock or the Bellevue-Huron Trackage Rights (or a state or local government entity acting on behalf of such user) regarding cessation of service either is pending before the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of the complainant within the two-year period; and (4) the requirements at 49 C.F.R. § 1105.12 (newspaper publication) and 49 C.F.R. § 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under Oregon Short Line Railroad—

Leases/Agreements—Conrail Inc., FD 33388 (Sub-No. 95), slip op. at 3-4 (STB served Jan. 26, 2005) (extending the Huron Dock lease and the Bellevue-Huron Trackage Rights as part of a settlement between NSR and W&LE).

² W&LE states that it has received railroad ballast for its own use at the Huron Dock within the last two years. Such non-revenue movements, however, do not affect the availability of the class exemption for abandonment or discontinuance of out-of-service rail lines. See, e.g., Cambria & Ind. R.R.—Aban. Exemption—in Cambria Cty., Pa., AB 240 (Sub-No. 4X) (ICC served Nov. 23, 1994).

Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. § 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA)³ to subsidize continued rail service has been received, this exemption will be effective on April 21, 2019, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA under 49 C.F.R. § 1152.27(c)(2)⁴ must be filed by April 1, 2019.⁵ Petitions for reconsideration must be filed by April 11, 2019, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with Board should be sent to W&LE's representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

If the verified notice contains false or misleading information, the exemption is void ab initio.

³ The Board modified its OFA procedures effective July 29, 2017. Among other things, the OFA process now requires potential offerors, in their formal expression of intent, to make a preliminary financial responsibility showing based on a calculation using information contained in the carrier's filing and publicly available information. See Offers of Financial Assistance, EP 729 (STB served June 29, 2017); 82 Fed. Reg. 30,997 (July 5, 2017).

⁴ Each OFA must be accompanied by the filing fee, which currently is set at \$1,800. See 49 C.F.R. § 1002.2(f)(25).

⁵ Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require environmental review.

Board decisions and notices are available at www.stb.gov.

Decided: March 19, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.